

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK SIMS,

Plaintiff,

v.

DR. MICHAEL SAYRE, et al.,

Defendants.

No. C 08-01691 SBA (PR)

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL AND  
DENYING MOTION FOR ORDER TO  
ALLOW LEGAL ASSISTANCE FROM  
PRISONER JAIL HOUSE LAWYERS  
WHILE COURT CONSIDERS TO  
ASSIGN COUNSEL**

Plaintiff has filed a motion for appointment of counsel to represent him in this action. He has also filed a "Motion for Order to Allow Legal Assistance from Prisoner Jail House Lawyers While Court Considers to Assign Counsel."

There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of

1 these factors must be viewed together before reaching a decision on a request for counsel under  
2 § 1915. See id.

3 The Court is unable to assess at this time whether exceptional circumstances exist which  
4 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at  
5 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the  
6 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the  
7 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th  
8 Cir. 2004). Accordingly, the request for appointment of counsel (docket no. 29) at this time is  
9 DENIED. The Court will consider appointment of counsel later in the proceedings, after Defendants  
10 have filed their dispositive motion and the Court has a better understanding of the procedural and  
11 substantive matters at issue. Therefore, Plaintiff may file a renewed motion for the appointment of  
12 counsel after Defendants' dispositive motion has been filed. If the Court decides that appointment of  
13 counsel is warranted at that time, it will seek volunteer counsel to agree to represent Plaintiff pro  
14 bono.

15 Because the Court has denied Plaintiff's request for appointment of counsel, the Court also  
16 DENIES his "Motion for Order to Allow Legal Assistance from Prisoner Jail House Lawyers While  
17 Court Considers to Assign Counsel" (docket no. 31).

18 This Order terminates Docket nos. 29 and 31.

19 IT IS SO ORDERED.

20 DATED: 5/17/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 DERRICK SIMS,

5 Plaintiff,

6 v.

7 MICHAEL SAYRE et al,

8 Defendant.

Case Number: CV08-01691 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on May 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Derrick D. Sims J-20913  
16 Pelican Bay State Prison  
17 P.O. Box 7500  
18 Crescent City, CA 95531

19 Dated: May 21, 2010

20 Richard W. Wieking, Clerk  
21 By: LISA R CLARK, Deputy Clerk  
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United States District Court  
For the Northern District of California